

CALFED Governance Challenges Going Forward

Based on interviews, surveys and testimony, officials and stakeholders have identified a number of governance-related challenges facing the CALFED program and the Bay-Delta Authority. Previously, the Commission summarized the issues and problems associated with the current governance structure. This document 1) identifies underlying tensions that influence the governance discussion; 2) summarizes the desired attributes and expectations of the governance system; and, 3) distills the domains and direction of needed improvements.

As with the previous document, this summary is not predicated on Commission deliberations and does not represent any conclusions by the Commission. Rather, this summary was prepared as a mechanism to focus future testimony and discussions related to the Commission's review. In particular, the Commission would welcome written comments that correct, clarify or amplify these issues, as well as comments that identify other challenges not included in this summary.

Governance tensions

Various officials and stakeholders have identified different views of what lies ahead for CALFED, how the program should be focused, and what the governance system must accomplish. While some of these issues were identified in the previous work product, these differing perspectives present tensions that need to be reconciled for progress to be made:

1. Faithfully implement the ROD vs. Do what is necessary to fix the Delta.

The CALFED process has resulted in specific commitments – programs and actions – that are documented in the Record of Decision. While some conditions have changed – including fiscal and ecological conditions – some of the participants believe CALFED should stay focused on implementing the ROD. This requires a governance structure that is focused on coordinating the management of public programs. Other participants believe that the ROD is inadequate or antiquated, or both. Some of these participants believe the ROD did not really resolve conflicts about what needs to be done to restore the Delta and improve the water supply system. From this perspective, the governance structure must resolve fundamental policy issues and provide for an assertive adaptive management system that has never been successfully accomplished in the arena of natural resource management.

2. Rely on unilateral, agency-based decision-making vs. Rely on a collaborative decision-making approach.

Some participants believe the primary purpose of a governance structure is to coordinate the multiple programs identified in the ROD, to resolve conflicts among the government entities, and to assess and communicate progress. Public interest groups should be able to provide comments to the government agencies, but decisions within existing legal authorities are the sole responsibility of agency officials. From this perspective, the governance structure should not have any authority to direct or second-guess those decisions once they are made. In contrast, other participants – and some of the stakeholders, in particular – believe that CALFED should be a venue for resolving conflicts and developing consensus-based decisions among all of the major interests, including public agencies, their customers, and public interest organizations. While supporters of this idea do not necessarily believe the CALFED governance structure should have decision-making authority over the implementing agencies, they do believe the governance process should encourage or even require that all decisions that could have significant impacts on the Bay-Delta be shaped through the CALFED process.

3. Fix the Delta vs. Fix the problems that impact the Delta.

There is general agreement that support for the ROD was built by adding elements that various interest groups believed could contribute to the solution. Both tighter fiscal times and concern about growing problems in the Delta proper have prompted many to advocate for a tighter focus on the Delta. At the same time, there is still a substantial interest in solving problems that could reduce pressures on the Delta, even if that solution is hundreds of miles away. Some of this tension can be eased by separating problems that are worth solving and will be solved through CALFED from the problems that are worth solving, have an impact on the Delta, and will be solved through some other means. The Department of Water Resources' work on regional water plans is an example of an alternative mechanism for reducing water demands on the Delta. Easing this tension might also require refinement of what CALFED is specifically trying to accomplish and which strategy will be pursued to achieve those goals. For example, the unresolved discussion about how to best increase water supply reliability will need to be resolved to ease these kinds of tensions.

Desired attributes of a governance system

The legacy documents and those involved in crafting the current governance structure have identified the attributes that the system must provide. While these attributes may be the same in general terms, the CALFED experience and the reconsideration of the governance structure provides the opportunity to identify modifications that would improve these attributes. The following briefly summarizes what the Commission has been told about these attributes.

- **Transparency.** The record is clear that legislators and stakeholders want and need a governance structure that is "transparent." The current structure relies heavily on public meetings to create transparency. Public and non-voting legislative members were placed on the BDA board to increase openness. But officials also are candid that most of the controversial issues are worked through outside of the public meeting process. Public members are at a disadvantage because they are not part of the everyday discussions among the officials, and the officials are reluctant to candidly discuss issues and disagreements in public. Stakeholders often include in their definition of transparency the ability to anticipate, influence and then ultimately understand administrative decisions. Some public officials believe general disclosure requirements provide adequate transparency, while other participants advocate for formal protocols that would identify and provide public debate for all significant decisions concerning the Delta.
- **Accountability.** Like transparency, accountability is a noble but illusive attribute. Part of this challenge is definitional. Good organizational designs provide for internal accountability so that individuals know their roles and responsibilities, managers can make decisions necessary to address problems and improve performance, and large organizations can orchestrate the contributions of various divisions to achieve an overall goal. But successful public agencies also must develop robust mechanisms for external accountability. In this way, transparency and accountability are closely related. Public agencies must report what they are doing and how they are doing it. And in particular, they must measure progress. Public agencies do not have elegantly simple measures, such as profit/loss statements. And most public agencies are trying to affect an outcome over which they have limited control. Still, both internal management and external accountability mechanisms require measurement and response.
- **Efficiency.** Public efforts are imbued with various requirements that diminish efficiency – personnel and contracting rules, public disclosure, comment and appeal procedures. But to be successful, government must also be responsive to dynamic natural, social and economic systems that require swift and definitive action. CALFED is both praised and

criticized for its allegiance to process. In the future, CALFED leaders will need to develop procedures that are transparent and inclusive, improve decision-making and reduce conflicts, and do all of these in ways that take less time and fewer resources.

- **Effectiveness.** A premise of CALFED is that the implementing agencies can accomplish more working together than they can individually. In some instances, effectiveness is improved by reducing conflicts, such as those between regulatory and service-providing agencies. By sharing priorities, different agencies also can align their efforts, leverage additional benefits and achieve goals quicker. Agencies also have the potential to integrate efforts, strategically using assets and authorities to accomplish something they cannot do alone.

Desired expectations of a governance system

Some of the problems that participants identify within the current governance structure also reveal what a fortified governance structure should achieve. One way to assess potential modifications to the governance structure would be whether those changes could be expected to improve these outcomes.

- **Stronger state/federal relationship.** The state and federal relationship has been one of those most dynamic and challenging aspects of CALFED, dating back to before there was a CALFED. The early efforts focused on coordinating actions to thwart regulatory stalemates; latter day efforts have focused on maintaining a degree of commitment and investment needed to solve problems over the long-term. There are both individual and institutional aspects of these relationships. Institutional solutions cannot make up for individual weaknesses, but the partnership might be strengthened by better aligning legal, regulatory, operational and fiscal incentives and sanctions to encourage state and federal agencies to work together. Over the long-term, partnerships are sustained and strengthened because they add value – principally by allowing the partners to accomplish something that they cannot by themselves.
- **Stronger legislative/congressional support.** Early discussions about CALFED governance focused on the need to bridge the federal and state executive branches and by implication, to provide continuity as administrations changed. Experience has revealed the importance of strong relationships between CALFED and policy-makers in Congress and the Legislature. The testimony suggests that this relationship should be predicated on a strong “mandate” for what will be pursued and how it will be pursued. To craft that mandate, policy-makers must affirmatively respond to major problems – existing or anticipated – with a definitive policy solution. That approach allows the relationship between policy-makers and administrators to focus on progress toward specific goals.
- **Growing consensus among stakeholders.** A common hope for CALFED is that it will reduce conflicts that rise to the level of legal action or significant losses to one side. An emerging recognition is that the ROD represents more of a cease-fire than an actual peace treaty. Some participants believe the water wars will return when CALFED cannot deliver new solutions to persistent problems. Regardless of whether CALFED is grounded in collaborative decision-making, many participants see potential to cooperatively solve fundamental policy differences as a reason to maintain and strengthen CALFED.
- **Quicker and better resolution of problems and conflicts.** While some participants believe that CALFED has been hobbled by a consensus that is only an inch deep, most participants recognize that trying to meet the broad objectives will present a stream of predictable and unpredictable conflicts. For CALFED to “add value” it must consistently resolve those conflicts in ways that are quicker and more satisfying than alternative venues, including the courts and the Legislature.

- ***Better overall solutions.*** The ultimate goal must be more than the absence of conflict, but CALFED has not yet detailed a vision for how everyone really gets better together. Through adaptive management and close coordination of efforts, CALFED has the potential to develop cost-effective solutions that can only be achieved by the agencies working together and sharing resources, regulatory tools and expertise to achieve commonly held objectives.
- ***Better understanding of progress and outcomes.*** Part of the current debate is whether CALFED has made progress, and in particular, whether that progress is “balanced” among the different objectives. Some officials believe the current controversy could be eased by better articulating the progress that has been made. Others have been frustrated that objective performance measures have not been adopted, while still others believe those measures cannot be developed until there is agreement on how CALFED will achieve broad objectives.
- ***A willingness to pay.*** The CALFED program must quickly evolve from a place where agencies, stakeholders and participants get “free money” to advance their agenda, to a place where they get the best return on their investment. This evolution will require resolving key policy decisions concerning current liabilities and future benefits.

The domains of needed changes

Government officials and stakeholders have identified a wide range of potential solutions to CALFED’s governance problems and the role of the Bay-Delta Authority. The following attempts to distill those suggestions into the domains of governance that need to be improved and the general direction of needed improvements. This summary is intended to encourage more specific discussion about how to best accomplish these needed improvements.

Executive leadership needs to be clarified and strengthened.

The previous summary identified some of the issues associated with leadership. Specifically:

1. It is not clear who is responsible for the success or failure of CALFED.
2. It is not clear who speaks for the Governor.
3. Political leadership is needed to resolve policy disputes and reach agreements.
4. Federal interest in CALFED has diminished since the ROD was signed.
5. Extraordinary leadership is necessary to maintain strong federal-state ties.

To address these issues, the leadership structure must focus responsibility and authority. It must provide clarity of roles and reporting authorities. It might be helpful to remember that the agency structure is intended to coordinate related government activities, and create a clear chain of command with a reasonable span of control. One concern is the governance structure should provide for some continuity over time and over administrations, but it should not diminish the Governor’s direct and ultimate responsibility for the program’s success or failure.

As in every discussion of leadership, the necessary qualifications of individual leaders are shaped by the job description. The leader of CALFED must be responsible for interagency and intergovernmental coordination. The leader must be responsible for legislative and congressional support, and ensure the effective participation of stakeholders and awareness among the broader constituency of civic leaders.

As the focal point for responsibility and authority, the leader also becomes the focal point for accountability – factually measuring the progress that has been made, seeking and making the changes necessary to improve the program’s performance.

Legislative leadership needs to be focused on policy choices and outcomes.

The previous document identified effective legislative oversight as important to building and maintaining the involvement and support of policy-makers. Additional testimony has since identified the need for a clear legislative “mandate” to give executive branch leaders the political authority needed to make change. The Legislature also must provide resources, to consider policy choices that arise, and to hold the executive branch accountable for progressing toward measurable goals. By focusing on goals, the Legislature’s interventions will be driven by results, rather than the complaints of individual constituencies.

Interagency coordination should be predicated on science-based adaptive management.

The legacy documents regarding CALFED governance focus primarily on an entity responsible for the range of management-related functions – including direction, coordination, review and approval of budgets and plans, internal oversight and accountability. The debate preceding the BDA focused on how much real authority to give to the BDA and how to make administrative decisions more transparent through a public process. As previously described, participants have identified several problems facing this entity, including:

1. Adaptive management has not been adopted.
2. The structure of the BDA board does not support its functions.
3. Public decision-making is not providing needed transparency.
4. Neither the BDA, nor CALFED overall, are viewed as a place where member agencies, their customers and other stakeholders can achieve their goals quicker and more effectively than they can on their own or elsewhere.
5. Decision-making procedures have not been adequately developed.
6. The coordination and oversight functions of the BDA are seemingly in conflict.
7. The role and function of the board of the BDA, relative to its staff, is unclear.

Some of these problems are structural and could be dealt with as suggested by some of the testimony provided to the Commission by separating management functions from external oversight.

But some of these problems may also be rooted in the vagueness of legacy documents and what the structure is really trying to accomplish. Coordination has different meanings that together constitute a continuum of options – everything from making sure agencies are not duplicating efforts or working at cross purposes to integrating the expertise, authority and resources of involved agencies to accomplish common goals.

By invoking adaptive management, the ROD seems to envision (and some stakeholders now advocate more clearly) an approach on the integration end of the continuum. But even the advocates of this approach acknowledge it is difficult, and has not yet successfully been modeled in the realm of natural resource management, in part because of the sophisticated and poorly understood dynamics of ecosystems.

Nevertheless, policy-makers, resource managers and stakeholders will need to consider what it would take to truly put in place adaptive management of the Bay-Delta system. That model would be different than the BDA model of a separate entity to monitor and nudge the work of other agencies. An adaptive management system would require consistent executive-level commitment. It would require the development of strong and well-known management practices. And it also may require modifications to organizational design and management procedures to integrate the decision-making and activities of the various implementing agencies.

The science program needs to be independent, adequately funded and used to guide decisions.

The adaptive management model referenced above would need to rely heavily on the science – what is known and what is unknown – that the science program is intended to produce. Participants frequently point to the science program as an important accomplishment of CALFED, although there is recognition that the program has not had the resources or the time needed to develop into the mature and sophisticated tool needed to inform management of the Bay-Delta estuary. As an organizational asset, the program needs to be fully integrated into deliberations and decisions – by stakeholders, by managers and by policy-makers. The science program, however, also must be independent enough so that its work is credible and that conclusions are not influenced by politics, and by the political agenda of the executive branch.

Stakeholder involvement should become more efficient and effective.

Stakeholder involvement has been a hallmark of the CALFED process, and participants have strived to improve the efficiency and the effectiveness of that involvement. In general, stakeholders agree that they should be consulted on problems and potential solutions. They should be informed of pending decisions, allowed to influence those decisions, and understand decisions when they are made. There should be an opportunity to identify and resolve conflicts among stakeholders and the government through the CALFED process.

More recently, there is concern that relying on the Federal Advisory Committee Act limits the ability of the Bay-Delta Public Advisory Committee to directly provide feedback to the BDA or to state policy-makers. To be efficient and effective, the stakeholder process will need to involve more Californians who are concerned about these issues and could contribute to better solutions. The process will need to make it easier for those people to monitor and engage in discussions, without necessarily attending meetings. And stakeholders will need to be able to directly inform whoever has a role in improving the Bay-Delta.

Oversight needs to be outcome-based and verifiable.

The legacy documents refer to oversight in ways that are closely linked – even combined with – coordination and accountability. In general, they describe oversight in terms of a management function. Good management requires executives to continuously assess performance and make changes to people and procedures to improve performance. The BDA's structure, however, is predicated on public and external oversight. Management oversight cannot be accomplished effectively through external mechanisms.

In government, the Legislature typically provides external oversight by investigating problems, and by reviewing and approving budgets. The Legislature has recognized the limitations of its ability to provide focused oversight of specific programs and has created other mechanisms to ascertain facts or to assess the performance of executive branch activities. In those instances, some of the most effective mechanisms are independent of management control, fact and outcome-based, and involve public procedures or public reporting of conclusions. As described above, there is agreement that the governance structure must publicly track progress, assess obstacles and identify changes needed in management and policy.

Summary

The tensions described above are not necessarily mutually exclusive, but need to be reconciled if changes to the governance structure are going to be predicated on what CALFED is trying to accomplish and how it is to achieve those goals. The attributes and expectations describe what all participants need and want from the governance structure. Finally, the domains of needed changes suggest where reforms must be made to improve the governance of CALFED.